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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

OBJECTIONS AND EXCEPTIONS OF APPELLANT TO APPELLEES' BRIEF ON ACCOUNT OF NONCOMPLIANCE WITH RULE 27 (d).

WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Attorneys for appellant.

February, 1936.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

OBJECTIONS AND EXCEPTIONS OF APPELLANT TO APPELLEES' BRIEF ON ACCOUNT OF NONCOMPLIANCE WITH RULE 27 (d).

May it please the Court:

Appellant respectfully requests permission to submit the objections and exceptions hereinafter stated to the brief on behalf of the United States and the Secretary of Agriculture, because of the failure of said brief, in numerous instances, to comply with the provisions of rule 27 (d) of the rules of this Court. That is to say, said exceptions and objections are taken because, with respect to numerous factual statements in appellees' brief, there is either a failure to refer to supporting evidence in the record before this Court or the evidence in the record does not support the factual statement made in the brief.

In view of the practice before this Court under which reply briefs are not permitted, and in view of the fact that the numerous objections and exceptions here stated could not be presented within the time allowed for oral argument, appellant respectfully requests that the objections and exceptions stated be accepted and be considered by this Court in the disposition of this case, if such procedure is deemed appropriate by this Court under the circumstances.

In the following statement of said objections and exceptions, the number first stated in each objection refers to the page of the Government brief. Following is either a quotation of the factual statement or, where that would be too long, a reference to the paragraph of the brief. Following this, the averment of appellant either that the factual statement gives no reference to the record or that the reference there given does not support the statement so made.

Summary of Objections and Exceptions to Appellees' Brief for Noncompliance with Rule 27 (d).

Govt. brief—p. 17:

"The Transit House is an old hotel built at a time when there was not convenient access for appellant's patrons to the business section of St. Joseph. It is operated by a lessee at a rental less than adequate to pay taxes, insurance, and upkeep, and for years it has been a losing business proposition."

No reference to record.

Govt. brief—p. 18:

"In using reproduction cost, without giving weight to other factors such as original cost, the Secretary was *per se* liberal."

No reference to record.

No evidence in record as to original cost.

Govt. Brief—p. 19:

"The Secretary's valuation includes a substantial

amount for going concern value, which is inextricably interwoven with other values that were made on the basis of a plant in successful operation. Also, the liberality of the Secretary in using reproduction cost as the measure of structural value without giving consideration to other factors, such as original cost, is obvious in the case of a plant erected in the 1890's."

No reference to record.

No supporting evidence in record.

Govt. brief—p. 20:

"Appellant's property has reached a normal service condition and the history of its repair and depreciation accounts is a fair criterion of future needs. This history shows a policy of maintenance and replacement of worn-out parts out of the repair account over a period of many years."

No reference to record.

No supporting evidence in record.

Govt. brief—p. 21:

"* * * leaving capital stock outstanding of $1,875,000."

No reference to record.

Government exhibit 121-A, p. 381, shows present stock issue is no par stock.

Govt. brief—p. 22:

"These resales are largely made by traders in the traders' division, and it is proper that they should pay a charge, otherwise the cost of carrying the traders' division is borne by the general rate payers who do not use it."

No reference to record.

Govt. brief—p. 23:

"Hence, the prescribed maximum rates for the feedlots are somewhat higher than the existing rates for these facilities, and it is estimated that the prescribed maximum rates are high enough to permit the feedlots themselves to pay a fair return on their own fair value."

No reference to record or Secretary's decision.

Govt. brief—p. 25:

"In addition to cost of handling the different types

of business, the Secretary had to consider the value of the service, and this factor was duly weighed."

No reference to record or Secretary's decision.

Govt. brief—p. 31:

"While it had this original purpose, it is not used exclusively by employees or patrons of the stockyards."

No reference to record.

Unsupported by record.

Govt. brief—p. 32:

"• • • even though their yards are located some distance from the business section of the city (R. 209)."

Not supported by record reference given.

Govt. brief—p. 33:

"• • • (many, if not most, of whom do not personally accompany their livestock to market, and very few of whom use the Transit House) • • •."

No reference to record.

Unsupported by record.

Govt. brief—p. 51:

"Spratt obtained his value of the Belt land by comparing it with appellant's adjoining land, but in doing so he capitalized at 6% the income derived by appellant at its then prevailing rates."

No reference to record.

Record does not support statement.

Govt. brief—pp. 51-52:

"So up to this point it is obvious that the whole value of the stockyards land and of the right-of-way had been calculated by Spratt upon a capitalization of the stockyard company's earnings under the then existing rates—obviously a fallacious method when rates themselves are fixed by regulatory authority."

No reference to record.

Unsupported by record.

Govt. brief—p. 52:

"But when Spratt, in 1932, came to make a reappraisal of Zone A he relied upon the consideration stated in the mere paper transaction between appellant and its subsidiary, rather than upon the later sale to outside parties."

No reference to record.

Unsupported by record.

Govt. brief—p. 52:

"In this proceeding Spratt and others testified that the total value of the Belt property for rate-making purposes in the year 1928 was $2,500,342 (Gov. Ex. 135, p. 158). In reaching this valuation he had included the land at 30c per square foot (Gov. Ex. 135, p. 25)."

Reference to record does not support statement that Spratt testified to value of $2,500,342.

Govt. brief—p. 53:

"There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements of the property."

No record reference shown.

Not supported by evidence.

Govt. brief—p. 58:

"• • • at a time when labor and materials were much cheaper than now, it is obvious that an extremely liberal policy in respect to the determination of fair value was pursued towards appellant."

No reference to record.

No evidence in record to support statement.

Govt. brief—p. 61:

"That Henrici used the personal inspection method prior to the first hearing in 1929 is clearly established by the evidence (R. 214)."

Not supported by reference given.

Govt. brief—p. 63:

"Although the Government offered these men as witnesses • • •"

Not supported by record.

Govt. brief—p. 66:

"Inasmuch as Henrici had carefully inspected appellant's property prior to the first hearing and had given his independent judgment upon its condition • • •"

No reference to record.

Not supported by record.

Govt. brief—p. 68:

"• • • the Secretary adopted valuations of the

structural properties as a whole which were based upon the fact of their successful operation * * *."

No reference to record.

Not supported by record.

Govt. brief—p. 88:

"Indeed, the valuation adopted is the value of a plant in successful operation * * *."

No reference to record.

Contrary to record.

Govt. brief—p. 91:

"It is clear that Henrici regarded his valuation as embodying the element of going concern value."

No reference to record.

Not supported by record.

Govt. brief—p. 91:

"Thus in ascertaining value the Secretary has adopted a method which allows a substantial increment over and above actual cost."

No reference to record.

No evidence as to actual cost in record.

Govt. brief—p. 96:

"For example, the roof of the hog yards was replaced at a cost of $4,445.93, and the roof of the sheep shed was replaced at a cost of $3,232.43 (Gov. Ex. 121-A, pp. 254, 4)."

Facts stated not supported by exhibit cited.

Govt. brief—p. 96:

"A study of the company's annual expenditures for repairs and maintenance discloses that they include many replacements."

No reference to record.

Not supported by record.

Govt. brief—p. 97:

"The Secretary's estimate of the amount annually needed for repairs and replacements was based first of all upon a study of the actual amounts expended over a long period of years by appellant and charged to the repair account. The figures are as follows:

YEAR	TOTAL	YEAR	TOTAL
1918	$40,484.37	1927	$39,000.48
1919	72,131.89	1928	45,679.60
1920	52,820.69	1929	43,516.51
1921	29,172.07	1930	29,500.12
1922	38,560.57	1931	24,905.34
1923	48,350.88	1932	19,793.79
1924	47,072.47		
1925	42,391.99	Total	629,066.81
1926	55,686.04	Yearly Average	41,937.78

No reference to record.
Unable to find figures before 1923.

Govt. brief—p. 97:

"There are also included in these repairs certain items of expense for replacements, such as replacement of the roof on the hog yards and the sheep shed previously discussed."

No reference to record.
Not supported by record.

Govt. brief—p. 98:

"* * * although deductions for retirements shown on the books do not in all cases represent actual loss because they represent gross and not net retirements. Some of the properties retired were sold or traded for new and similar assets, so that the net retirements would not be as great as is indicated."

No reference to record.
Not supported by record.

Govt. brief—p. 103:

"The property in the pen areas is kept in proper operating condition by ordinary repairs and piecemeal replacements. The reproduction new cost of this part of the property is about one-half of the reproduction cost of the entire property—or approximately $1,500,000."

No reference to record.
Not supported by record.

Govt. brief—p. 103:

"This amount includes retirements for fire losses which were covered by insurance (R. 453)."

Reference to record does not support statement losses were covered by insurance.

Govt. brief—p. 106:

Line in table shows dividend of $187,500 for 1932.

Government ex. 121-A, p. 10, shows dividend 1932 $112,000, or $3.00 per share.

Govt. brief—pp. 114-115:

"The record in the instant case clearly demonstrates that appellant's property has reached a normal operating condition—a condition in which the expense required for repairs and replacements has for some years been, and may in the future be expected to be, fairly static."

No reference to record.

Not supported by record.

Govt. brief—p. 115:

"The stockyard was built sometime during the 1890's and has been rendering continuous service since that time (R. 626)."

Reference to record shows only part of stockyards built during the 1890's.

Govt. brief—p. 116:

"A consulting engineer who testified for appellant at the second hearing said that appellant's property had 'about reached the turn-over stage' and that this applied to the 'stockyards' buildings, and improvements, which include the pen areas' (R. 723)."

Incorrect summary of statement made by witness at page referred to in record.

Govt. brief—p. 121:

"* * * it appears from appellant's books that this charge was not always imposed (R. 569)."

Not supported by reference given to record or otherwise.

Govt. brief—pp. 121-122:

"* * * was unreasonable and constituted unjust discrimination (R. 128)."

Statement as to unjust discrimination not supported by reference given, which related only to feed lot yardage.

Govt. brief—p. 137:

"Lack of sufficient return from the operation of the

feedlots was reflected in a reduced net income for appellant, with the resulting need for higher rates for other services."

No reference to record.
No evidence in record.

Govt. brief—p. 137:

"* * * an analysis was made to determine the value upon which the feedlots should yield a fair return."

No reference to record or decision of Secretary.
No evidence in record of such analysis.

Govt. brief—p. 137:

"Relating the square foot area of the feedlots in each zone to the square foot land value thereof, it is found that the value of the land occupied by the feedlots is $211,660."

No reference to record and no such finding by Secretary.

Govt. brief—p. 138:

"* * * making the total cost of reproduction new less depreciation of structures, plus the value of the land used for these facilities, $369,192."

No reference to record and no such finding by Secretary.

Govt. brief—p. 138:

"The taxes and insurance properly allocable to the feedlot lands and structures were about $6,336 (Gov. Exs. 121A, 121B, 121C)."

Statement not supported by exhibits cited.

Govt. brief—p. 138:

"Many of these structures are substantial in character and a large portion of the land is located within the limits of the city of St. Joseph and must, therefore, carry a higher tax rate than lands located outside the limits. The details upon which the segregation of such taxes and insurance were made will be found on pages 348-375 of Government Exhibit 121A."

Part of statement contains no reference to record.
Last sentence not supported by exhibit cited.

Govt. brief—p. 160:

"As a matter of fact, during the five-year period, appellant actually expended for repairs only $156,096, or $36,404 less than the amount allowed for that purpose by the Secretary."

No reference to record.

Contrary to table, p. 97 Gov't brief.

Govt. brief—p. 161:

"Appellant annually received in normal course recurring refunds on casualty insurance, which for the five-year period amounted to $31,816 (Gov. Ex. 121A, p. 7, line 8), and which appellant has not included in its calculation either as income or as a decrease in expense."

Statement not supported by reference to exhibit.

Govt. brief—p. 161:

"Based on appellant's experience for the years 1931-1932 there would have been an increase in appellant's revenue for the five-year period of $108,428 if appellant had applied the maximum rates for resales and reweighs permitted by the Secretary's order to all the business permitted by that order (Gov. Exs. 121A, p. 60; 121B, p. 7; 121C, p. 14; 122; 122A)."

Statement not supported by references given.

Govt. brief—p. 176:

"The Secretary properly recognized that in addition to the cost of rendering services, the value of the services should be considered."

No supporting reference to record or Secretary's decision.

Not supported by record or decision.

Respectfully submitted,

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February, 1936.